

<div>CITY OF SAN JOSÉ, CALIFORNIA Department of Planning, Building and Code Enforcement 801 North First Street, Room 400 San José, California 95110-1795</div> <div>STAFF REPORT</div>		Hearing Date/Agenda Number P.C. 9/11/02    Item: 4.a.	
		File Number CP02-020/ABC02-005	
		Application Type Conditional Use Permit	
		Council District 3	
		Planning Area Central San Jose	
		Assessor's Parcel Number(s) 434-06-064	
PROJECT DESCRIPTION			
Completed by: John Davidson			
Location: Southwest corner of Willow Street and S. Almaden Avenue			
Gross Acreage: 0.29		Net Acreage: 0.29	
Net Density: n/a			
Existing Zoning: CP Commercial		Existing Use: Commercial	
Proposed Zoning: No change			
Proposed Use: sale of alcohol for off-site consumption at an existing grocery store			
GENERAL PLAN			
Land Use/Transportation Diagram Designation Medium High Density Residential (12-25 DU/AC) with Neighborhood Business District Overlay		Completed by: JED	
		Project Conformance: [X] Yes    [ ] No [X] See Analysis and Recommendations	
SURROUNDING LAND USES AND ZONING			
Completed by: JED			
North: Commercial		CP Pedestrian Commercial	
East: Commercial		CP Pedestrian Commercial	
South: Residential		R-M Multi-Family Residence	
West: Commercial		CP Pedestrian Commercial	
ENVIRONMENTAL STATUS			
Completed by: JED			
[ ] Environmental Impact Report [ ] Negative Declaration circulated on [ ] Negative Declaration adopted on		[X] Exempt [ ] Environmental Review Incomplete	
FILE HISTORY			
Completed by: JED			
Annexation Title: Original City		Date: March 27, 1850	
PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION			
[ ] Approval [ ] Approval with Conditions [X] Denial		Date: _____ Approved by: _____ [ ] Action [ ] Recommendation	
OWNER	APPLICANT		
Alfredo and Amanda Montoya Trust 204 Willow Street San Jose, CA 95110	Noel Montoya 204 Willow Street San Jose, CA 95110		

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**PUBLIC AGENCY COMMENTS RECEIVED**

Completed by: John Davidson

Department of Public Works

None received

Other Departments and Agencies

See attached memoranda from Police Department Vice Unit and Council Member Cindy Chavez.

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**GENERAL CORRESPONDENCE**

None received

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**ANALYSIS AND RECOMMENDATIONS**

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**BACKGROUND**

The applicant, Noel Montoya proprietor of Supermercado Mexico, is requesting a Conditional Use Permit and Liquor License Exception Permit to allow the sale of alcoholic beverages for off-site consumption in conjunction with an existing Supermercado Mexico store.

The site is located at the southwest corner of Willow Street and Almaden Avenue (204 Willow St) on a 0.29 gross acre site in the CP Pedestrian Commercial Zoning District which allows alcohol sales for off-site consumption subject to approval of a Conditional Use Permit.

The grocery store is located in the Willow Street neighborhood business district. Commercial uses are located to the north, east, and west, and multi-family residential uses are located behind the property directly to the south. The grocery store is located approximately 50 feet from the nearest residence on Almaden Avenue and approximately 500 feet from Washington Middle School, 650 feet from Sacred Heart School. Washington School is one block away from the subject site, and Sacred Heart school is two blocks from the site.

**ENVIRONMENTAL REVIEW**

The Director of Planning has determined that this project is exempt from further environmental review under the provisions of the California Environmental Quality Act.

**GENERAL PLAN CONFORMANCE**

The existing grocery store use with proposed alcohol sales is not consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of *Medium High Density Residential (12-25 dwelling units/acre)*. The current commercial use is, however, consistent with the Willow Street Neighborhood Business District overlay. Further, General Plan policy deems existing uses on legal parcels less than two acres in size to be in conformance regardless of the designation.

## ANALYSIS

The primary project issues include conformance with the Zoning Code/land use compatibility and conformance with the Liquor License Exception Permit requirements.

### **Conformance with the Zoning Code/Land Use Compatibility.**

Section 20.80.900 of Title 20 of the San Jose Municipal Code specifies that a Conditional Use Permit for the off-sale of alcoholic beverages can be issued only upon making the following findings as applicable:

1. If the use is closer than five hundred feet from any other off-sale use, the Planning Commission must find that the proposed off-sale of alcohol would not contribute to an excess concentration of establishments that sell alcohol.
2. If the use is closer than 500 feet from any child care center, elementary school, secondary school, college or university, or one hundred and fifty feet from any residentially-zoned property, the Planning Commission must find that the building in which the proposed use is to be located is situated and oriented in such a manner that would not adversely affect such residential and/or school use.

Other off-sale establishments are located within the same business district, including one market with a general off-sale license, and a mini-market selling beer and wine. The Police Department has indicated that there currently is an undue concentration of liquor licenses in the area, and the proposed liquor license would increase the overconcentration.

As indicated above, a school is located within 500 feet of the existing store, and residentially-zoned property is located within 50 feet of the store. The store's front entry is oriented towards Willow Street, away from the adjacent residential uses. However, the walking distance from the store entry to the nearest residence is within 100 feet. Based on these conditions, and the recommendation of the Police Department, staff believes that the Supermercado Mexico store is located and oriented in such a manner that the off-sale of alcohol **would** adversely affect proximate residential uses.

**Liquor License Exception Permit.** The applicant is also applying for a Liquor License Exception Permit which is required for liquor license applicants that may be denied by the Department of Alcoholic Beverage Control (ABC) pursuant to Assembly Bill (AB) No. 2897, Caldera Bill. AB 2897 requires the ABC to deny an application for a liquor license "*if issuance of that license would tend to create a law enforcement problem, or if the issuance would result in or add to an undue concentration of liquor licenses.*" If the ABC determines that a liquor license application would result in an undue concentration, an applicant may request an Exception Permit from the City based on "*public convenience and necessity.*"

The Planning Commission may grant the Exception Permit if it makes the following findings:

1. The premises are not located in an existing Project Crackdown /Weed and Seed Area or similar areas that qualify for these programs pursuant to the City's Neighborhood Revitalization Strategy.
2. The premises are not located within 300 feet of any public or private school.

3. The City's Police Department has determined that the use would not pose a detriment to the immediate neighborhood or continue current law enforcement problems.

The Police Department reports that the crime rate in the area is relatively low and that the site is not in a Project Crackdown area or similar strategy area. The closest elementary school is located over 300 feet from the project site. However, the Police Department has indicated concerns regarding the proposed Exception Permit because of the undue concentration of liquor licenses in the area, and is not supporting the proposed Exception Permit.

Staff recognizes it is a common convenience for the public to be able to purchase alcohol at a supermarket when shopping for groceries and other staples. However, with the presence of two other off-sale establishments within 500 feet of the proposed site, there would appear to be ample neighborhood off-sale opportunities for the public. Therefore, the claim the requested Permit is warranted due to public convenience and necessity appears unfounded. The public benefits of permitting off-sale at the subject site do not appear to outweigh the public impacts.

## CONCLUSION

The proposed use is **not** consistent with the requirements of the Zoning Code and Liquor License Exception Permit and is **not** compatible with surrounding residential and educational uses.

## RECOMMENDATION

The Planning staff recommends that the Planning Commission **deny** the requested Conditional Use Permit and Liquor License Exception Permit and include the following findings in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Medium High Density Residential (12-25 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram, and is located within the General Plan-designated Willow Street Neighborhood Business District.
2. The site is located in the CP Pedestrian Commercial Zoning District which allows grocery sales as a permitted use and off-site alcohol sales subject to approval of a Conditional Use Permit.
3. The applicant proposes to offer alcoholic beverages for sale for off-site consumption.
4. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment. The project is subject to San Jose Municipal Code Section 20.80.900, which regulates off-sale of alcohol.
5. The proposed project is located approximately 500 feet from an existing middle school site.

6. The project is subject to the Exception Permit criteria for a liquor license for the sale of off-site alcohol sales. The project site is located in an area with an existing over-concentration of liquor licenses. The site is not located in an area with a high number of calls for police service or a high crime rate.
7. The site is not located in an existing Project Crackdown /Weed and Seed Area or in similar areas, which qualify for these programs based on the City's Neighborhood Revitalization Strategy Criteria.
8. The site **is** located closer than 500 feet from any public or private school (preschool through high school).
9. The City's Police service investigation information (including but not limited to site-specific neighborhood analysis of calls for service) indicates the proposal **would** pose a detriment to the immediate neighborhood or continue current law enforcement problems.
10. The site is located within 50 feet of property zoned and used for residential purposes.
11. Other off-sale establishments are located in the neighborhood business district, within 500 feet of the store.
12. The walking distance from store entry to nearest residence is less than 100 feet.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed location of the off-sale of alcohol use **will contribute** to an excess concentration of establishments which sell alcoholic beverages.
3. The proposed use is located and oriented in such a manner that the off-sale of alcohol use **will adversely affect** proximate residential uses.
4. The proposed project **does not** meet the Zoning Ordinance criteria for approval for the off-site sale of alcohol.
5. The proposal **does not** meet the requirements of the Liquor License Exception Permit process.
6. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested **will**:

- a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
- b. Impair the utility or value of property of other persons located in the vicinity of the site; or
- c. Be detrimental to public health, safety or general welfare.

This permit application is therefore **DENIED**.

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In the event that the Planning Commission chooses to approve the subject permits, Planning staff recommends that the Planning Commission **approve** the requested Conditional Use Permit and Liquor License Exception Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Medium High Density Residential (12-25 DU/AC) on the adopted San José 2020 General Plan Land Use/Transportation Diagram, and is located within the General Plan-designated Willow Street neighborhood business district.
2. The site is located in the CP Pedestrian Commercial Zoning District which allows grocery sales as a permitted use and off-site alcohol sales subject to approval of a Conditional Use Permit.
3. The applicant proposes to offer alcoholic beverages for sale for off-site consumption.
4. Under the provisions of Section 15301 of the State Guidelines for Implementation of the California Environmental Quality Act (CEQA), this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Environmental Quality Act of 1970, as amended. The project will not have a significant adverse effect on the environment. The project is subject to San Jose Municipal Code Section 20.80.900, which regulates off-sale of alcohol.
5. The proposed project is located approximately 500 feet from an existing middle school site.
6. The project is subject to the Exception Permit criteria for a liquor license for the sale of off-site alcohol sales. The project site is located in an area with an existing over-concentration of liquor licenses. The site is not located in an area with a high number of calls for police service or a high crime rate.
7. The site is not located in an existing Project Crackdown /Weed and Seed Area or in similar areas, which qualify for these programs based on the City's Neighborhood Revitalization Strategy Criteria.
8. The site **is** located closer than 500 feet from any public or private school (preschool through high school).
9. The City's Police service investigation information (including but not limited to site-specific neighborhood analysis of calls for service) indicates the proposal would pose a detriment to the immediate neighborhood or continue current law enforcement problems.
10. The site is located within 50 feet of property zoned and used for residential purposes.
11. Other off-sale establishments are located in the neighborhood business district, within 500 feet of the store.
12. The walking distance from store entry to nearest residence is less than 100 feet.

13. Without issuance of the subject Conditional Use Permit, the proposed use would **not** meet the requirements of the Type 21-Off-Site Sale liquor license.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed location of the off-sale of alcohol use **would not** contribute to an excess concentration of establishments which sell alcoholic beverages.
3. The proposed use is located and oriented in such a manner that the off-sale of alcohol use **would not** adversely affect proximate residential uses.
4. The proposed project **meets** the Zoning Ordinance criteria for approval for the off-site sale of alcohol.
5. The proposal does **meets** the requirements of the Liquor License Exception Permit process.
6. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested **will not**:
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - d. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - e. Be detrimental to public health, safety or general welfare.
2. The proposed site is adequate in size and shape to accommodate the walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth **IS HEREBY GRANTED**. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and



be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

### CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.

### CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Supermercado Mexico Application for Off-sale General Liquor License, Type 21," dated April 11, 2002 on file with the Department of Planning, Building and Code Enforcement and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
2. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. The approval authority may impose substantive conditions designed to decrease sanitary sewage associated with any land use approval.
3. **Nuisance.** This use shall be operated in a manner that does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Hours of Operation.** This commercial facility shall not operate between the hours of 12:00 midnight and 7:00 A.M.
5. **Alcohol Sales.** The sale of alcohol shall conform to the requirements of the Liquor License requirements

of the Department of Alcoholic Beverage Control.

6. **Grocery Store Use.** The sale of alcohol shall be allowed in conjunction with the grocery store use and shall not be allowed in conjunction with any other use.
7. **Lighting.** On-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside the property.
8. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.

## CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.

c: Building Division (2)  
Engineering Services